

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

CC Docket No. 92-77

Billed Party Preference for 0+)

InterLATA Calls)

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REPLY COMMENTS OF GTE

GTE Service Corporation ("GTE"), on behalf of its affiliated domestic telephone and wireless companies, submits these reply comments in connection with both the *ex parte* proposal filed in this docket on March 8, 1995 by the Competitive Telecommunications Association ("Comptel"), the American Public Communications Council, Bell Atlantic, BellSouth Telecommunications, MFS Telecommunications, NYNEX, Teleport Communications Group and U S West (the "Comptel Proposal") and the Petition for Rulemaking, RM-8606, filed on February 9, 1995 by the National Association of Attorneys General ("Attorneys General Proposal").¹

I. THE COMPTTEL PROPOSAL

The Comptel Proposal suggests that rate ceilings be imposed on domestic operator services in lieu of the implementation of Billed Party

¹ These two matters have been combined as directed in the Commission's Public Notice of March 13, 1995, DA 95-473.

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Preference (“BPP”). The rates charged by an operator service provider (“OSP”) under the proposal would be monitored by the local exchange carrier (“LEC”) providing that OSP with billing service. The LEC would then submit quarterly reports to the Commission detailing, among other things, the number of calls exceeding the established rate ceilings. Thereafter, it would be up to the Commission to determine whether action against a particular OSP was warranted.

a. A System of Rate Ceilings May Create More Problems Than It Solves.

Although a system of rate ceilings, as described in the Comptel Proposal, sounds simple enough, in practice it may actually create more problems than it solves. In particular, a number of problems are likely to arise from the designation of LECs to police OSPs. The most obvious is the potential for unscrupulous OSPs to avoid monitoring by securing billing services from firms not subject to the monitoring requirement, such as credit card companies or collection agencies. This potential for the biggest offenders to completely escape the monitoring net suggests that the Commission may end up with a system in which the only players being policed are the majority of reputable OSPs -- the very entities for whom monitoring is unnecessary.

Moreover, if it is actually the case that only a minority of OSPs charge excessive rates, the rate ceilings may actually result in *increases* in OSP rates should some OSPs ultimately migrate toward the ceiling rates, effectively rendering them both rate ceilings and “floors.” Equally disturbing is the fact that

such a migration would occur without regard to underlying costs. So long as the OSPs achieve technical compliance with the rate ceilings, they would avoid any need to cost-justify their rates. In this regard, the National Association of Attorneys General, Telecommunications Subcommittee of the Consumer Protection Committee ("NAAG"), aptly notes that the "Rate Ceiling Proposal would establish a benchmark for OSP rates which has absolutely no relation to competitive prices."²

As with the problem of interexchange carriers engaging in the unauthorized changing of end user primary interexchange carriers (commonly known as "slamming"), the problem of some OSPs charging excessive rates has gone largely unchecked due to an enforcement vacuum at the Commission. Simply put, OSPs engaging in the conduct do so because they believe they can get away with it. Thus, no matter what system the Commission implements, the conduct will not cease until the Commission makes OSPs truly accountable by prosecuting them, and when warranted, penalizing them in accordance with the magnitude of their violations.

And although the proposed monitoring system may result in the Commission initially receiving more accurate and reliable information than that contained in a typical complaint, it may actually exacerbate the enforcement problem by infusing a third party -- namely, the reporting LEC -- into enforcement

² NAAG Comments at p. 5.

proceedings.³ Surely, OSPs will assert, as an affirmative defense, that the reporting LEC's billing records are inaccurate. Once raised, the Commission will have to address and the LEC will have to defend against such claims in one form or another. Undoubtedly, LECs will be vigorous in the defense of their billing systems,⁴ thus adding a new dimension to enforcement proceedings that will only result in more time and resources being required to enforce the new rules.⁵

Finally, it is not at all clear how the provision of more information to the Commission regarding an OSP's excessive charges through LEC reports will have any discernible impact on the problem if the Commission is not also given additional resources with which to commence enforcement proceedings. Although the system *might* render it easier to make the case against an offending OSP, a case must be made nonetheless.

³ The presumption that enforcement proceedings will take place is itself based on the assumption that the Commission will have the resources necessary to review the flood of reports that will be submitted by the LECs every quarter.

⁴ Not only will LECs be concerned with preserving the integrity of their billing systems, but they will also be inspired to avoid any liability on their part potentially flowing from such claims.

⁵ It is also not hard to imagine preemptive legal action being taken by an OSP against a LEC that has submitted damaging reports, adding yet another procedural wrinkle to enforcement efforts.

b. LECs Should Not Be Required To Monitor OSPs.

GTE believes that the idea of having LECs policing their own billing customers is fundamentally flawed. In addition to the potential problems discussed above, it is simply not appropriate for one segment of the industry to be saddled with the burden of policing the regulatory compliance of another segment of the industry. For one thing, such an obligation may conflict with a LEC's preexisting contractual obligation to maintain the propriety of an OSP's billing data. In addition, the Comptel Proposal leaves the cost recovery issue glaringly unanswered.⁶ Although the proposal appears firm in its conviction that "[t]he Commission should ensure that the LECs are permitted to recover these costs,"⁷ it offers no insight whatsoever into how or from whom these costs are to be recovered. Certainly the LECs will not assume this burden and it would violate every notion of fairness to impose such costs on consumers. Thus, the only logical source for cost recovery will be the OSPs themselves. This will add yet another incentive for OSPs to retain billing services from companies not saddled with the obligation to monitor.

⁶ Contrary to the Comptel Proposal's suggestion, GTE believes that the costs associated with the reporting element may be significant and may result in other billing system changes/enhancements being unnecessarily delayed. Moreover, in some instances, the extraction of OSP rates and billing data, as described in the Comptel Proposal's Illustrative Report, would be entirely dependent on the level of detail submitted by the OSP to GTE for billing. Often, OSPs perform their own rating function. Therefore, in some cases, GTE may lack sufficient information, such as specific rate or usage data, to complete the Illustrative Report.

⁷ Comptel Proposal, p. 9.

Should the Commission determine that the monitoring of OSP charges is in the public interest, it should require the OSPs themselves to submit quarterly summaries of the charges actually assessed on their calls. The accuracy and truthfulness of these summaries should be verified, under oath, by an appropriate officer of the OSP. OSPs submitting inaccurate and/or misleading information would be subject to appropriate sanctions.⁸

II. THE ATTORNEYS GENERAL PROPOSAL

The proposal of the Attorneys General to require certain OSPs to provide an audible statement to callers using OSP services that the carrier may not be their regular long distance provider is not necessary. In the Docket 94-158 proceeding, the Commission is examining whether OSPs should be required to “double brand” on both ends of a collect or third party call. If this requirement is adopted, a consumer being billed for a call will be informed of the carrier completing the call and, therefore, will be able to refuse to accept the charges. In addition, the monitoring of OSP rates (through OSP-generated reports) and

⁸ Even if the Commission were to determine that OSP rate ceilings are appropriate, in no event should they be imposed on commercial mobile radio service (“CMRS”) providers. These providers have not contributed to the problem giving rise to the instant proposals. Thus, it would be grossly unfair to automatically subject CMRS providers to rate ceilings based solely on wireline experiences. Moreover, the type of infrastructure necessary to provide these services gives rise to unique cost considerations not affecting wireline OSP services. Until such time as a record reflecting a detailed examination of these wireless services has been established, wireline restrictions should not be applied to them.

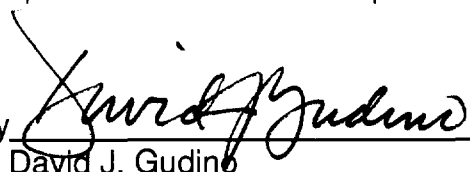
the potential imposition of meaningful sanctions for excessive rates should further alleviate the need for additional audible disclosures.

III. CONCLUSION

With ever-increasing industry competition, a well-informed consumer is the best defense against price gougers. As noted in the Comptel Proposal, significant strides have been made in educating consumers regarding calls made on public payphones. GTE is confident that with continued industry effort, this progress will continue. As it does, the perceived need for artificial rate ceilings or audible warnings will correspondingly diminish. So too will the enforcement apparatus necessary to prosecute the resilient few still able to cause harm. In short, GTE believes that the proposals, though well-intentioned, are misdirected and may result in more problems than they solve.

Respectfully submitted,
GTE SERVICE CORPORATION
on behalf of its affiliated domestic
telephone and wireless companies

By



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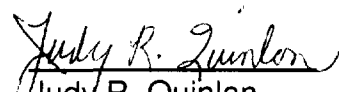
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April 27, 1995

ITS ATTORNEY

Certificate of Service

I, Judy R. Quinlan, hereby certify that copies of the foregoing "Reply Comments of GTE" have been mailed by first class United States mail, postage prepaid, on the 27th day of April, 1995 to the parties of record.


Judy R. Quinlan